

The Honorable Salvador Mendoza, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

WENDY FLEMING, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GREYSTAR MANAGEMENT
SERVICES, L.P., a Delaware
corporation, WILLIAM SIMMONS, and
EMMETT HIGGINS,

Defendants.

No. 2:15-cv-00174-SMJ

[PROPOSED] SETTLEMENT
ORDER AND FINAL
JUDGMENT

SETTLEMENT ORDER AND FINAL JUDGMENT

THIS MATTER came before the Court on Representative Plaintiff Wendy Fleming's motion for final approval of the proposed class settlement (the "Settlement"). The Court has considered all papers filed and proceedings in this matter and is fully informed regarding the facts surrounding the proposed Settlement. Based upon this information, the Court has determined to approve the proposed Settlement as fair, reasonable and adequate. The Court hereby

1 enters this Settlement Order and Final Judgment (“Final Judgment”), which
2 constitutes a final adjudication on the merits of all claims of the Settlement Class.

3 On _____, 2017, this Court granted preliminary approval to the
4 proposed Settlement between Representative Plaintiff and Defendants Greystar
5 Management Services, L.P. (“Greystar”), William Simmons, and Emmett Higgins
6 (collectively, “Defendants”). The proposed Settlement resolves all of the
7 Settlement Class’s claims against Defendants in exchange for Defendants’
8 agreement to provide certain monetary relief to Settlement Class Members as set
9 forth in the Agreement. On _____, 2017, this Court held a Settlement
10 Hearing to consider whether to grant final approval to the Settlement and to
11 consider Class Counsel’s application for an award of attorneys’ fees and costs
12 (“Fee Application”), and Service Award to the Representative Plaintiff. The
13 Court heard argument from counsel and others who elected to appear to voice
14 their support for, or objection to, the Settlement and/or the Fee Application.

15 Having read, reviewed, and considered the papers filed in support of and in
16 opposition to final approval of the Settlement, including supporting declarations;
17 oral arguments of counsel and presentations by members of the Class who
18 appeared at the hearing; Class Counsel’s Fee Application; the Agreement; and the
19 pleadings, the Court finds and concludes as follows:

20 1. **Definitions.** The definitions and provisions of the Settlement
21 Agreement and Release of Claims (the “Agreement”) are incorporated in this
22 Final Judgment as though fully set forth herein.

1 2. ***Jurisdiction.*** The Court has jurisdiction over the subject matter of
2 the Agreement with respect to and over all parties to the Agreement, including
3 Representative Plaintiff and all members of the Settlement Class.

4 3. ***Settlement Approval.*** The Court hereby grants final approval to the
5 Settlement and finds the Settlement is, in all respects, fair, reasonable, and
6 adequate, and in the best interests of the Settlement Class. The Court finds the
7 Settlement is within the authority of the parties and the result of extensive arm's
8 length negotiations between the parties and their counsel.

9 4. ***Class Certification.*** The Court confirms the proposed Settlement
10 Class satisfies the requirements of Fed. R. Civ. P. 23, as found in the Court's
11 Order Granting Preliminary Approval of Class Action Settlement ("Preliminary
12 Approval Order"). Accordingly, the Court makes final the conditional class
13 certification set forth in the Preliminary Approval Order.

14 5. ***Exclusion from Settlement Class.*** Certain members of the
15 Settlement Class have timely requested to be excluded from the Class and the
16 Settlement. Exhibit A, attached hereto, lists the Settlement Class Members who
17 timely requested exclusion from the Settlement Class. Accordingly, this Final
18 Judgment shall not bind or affect Settlement Class Members listed on Exhibit A.

19 6. ***Objections Overruled.*** The Court has considered and hereby
20 overrules all objections brought to the Court's attention, whether properly filed or
21 not.

1 7. **No Admission.** Neither this Final Judgment nor the Agreement is an
2 admission or concession by Defendants of the validity of any claims or of any
3 liability or wrongdoing or of any violation of law. This Final Judgment and the
4 Agreement do not constitute a concession and shall not be used as an admission
5 or indication of any wrongdoing, fault, or omission by Defendants or any other
6 person in connection with any transaction, event or occurrence, and neither this
7 Final Judgment nor the Agreement nor any related documents in this proceeding,
8 nor any reports or accounts thereof, shall be offered or received in evidence in
9 any civil, criminal, or administrative action or proceeding, other than such
10 proceedings as may be necessary to consummate or enforce this Final Judgment,
11 the Agreement, and all releases given thereunder, or to establish the affirmative
12 defenses of *res judicata* or collateral estoppel barring the pursuit of claims
13 released in the Agreement.

14 8. **Dismissal with Prejudice.** This Court hereby dismisses with
15 prejudice all claims of members of the Settlement Class against Defendants
16 arising from communications sent to Settlement Class Members referencing
17 Greystar's "Advantage Solutions Receivables" department, regardless of the
18 theory of recovery or alleged wrongdoing as set forth in the Agreement.

19 9. **Release.** Representative Plaintiff, for herself and as the
20 representative of the Settlement Class, and on behalf of each Settlement Class
21 Member who has not timely opted out and each of their respective agents,
22 successors, heirs, assigns, and any other person who can claim by or through
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1 them in any manner, fully, finally, and forever irrevocably release, relinquish, and
2 forever discharge with prejudice all Released Claims against the Released Parties.

3 10. ***Injunction Against Asserting Released Claims.*** Representative
4 Plaintiff, all Settlement Class Members, and any person or entity allegedly acting
5 on behalf of Settlement Class Members, either directly, representatively or in any
6 other capacity, are permanently enjoined from commencing or prosecuting
7 against the Released Parties any action or proceeding in any court or tribunal
8 asserting any of the Released Claims, provided, however, that this injunction shall
9 not apply to individual claims of any Settlement Class Members listed in
10 Exhibit A who timely requested exclusion from the Settlement Class. This
11 injunction is necessary to protect and effectuate the settlement, this Order, and the
12 Court's flexibility and authority to effectuate this settlement and to enter
13 judgment when appropriate, and is ordered in aid of the Court's jurisdiction and
14 to protect its judgments pursuant to 28 U.S.C. § 1651(a).

15 11. ***General Release Acknowledgement.*** By operation of this Final
16 Judgment, the Representative Plaintiff and Defendants expressly waive, and each
17 Settlement Class Member is deemed to have waived, any and all claims, rights, or
18 benefits they may have under California Civil Code § 1542 and any similar
19 federal or state law, right, rule, or legal principle that may apply. California Civil
20 Code § 1542 provides as follows:

21 A general release does not extend to claims which the
22 creditor does not know or suspect to exist in his or her
23 favor at the time of executing the release, which if

known by him or her must have materially affected his
or her settlement with the debtor.

12. ***Class Notice.*** The Settlement Administrator completed the delivery of Class Notice according to the terms of the Agreement. The Class Notice given by the Settlement Administrator to the Settlement Class, which set forth the principal terms of the Agreement and other matters, was the best practicable notice under the circumstances. The Class Notice program prescribed by the Agreement was reasonable and provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice. The Class Notice given to the Settlement Class Members satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of constitutional due process. The Class Notice was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of this Action, all material elements of the Settlement, and their opportunity to exclude themselves from, object to, or comment on the Settlement and appear at the Settlement Hearing. The Court has afforded a full opportunity to all Settlement Class Members to be heard. Accordingly, the Court determines that all members of the Settlement Class, except those who timely excluded themselves from the Class, are bound by this Final Judgment.

13. ***Notifications to Appropriate Federal and State Officials.*** Within ten (10) days after the filing of the proposed Agreement in this Court, Defendants served a notice of the proposed Settlement upon the appropriate state official of

1 each State in which a Class member resides and upon the Attorney General of the
2 United States. The Court finds that the notice provided by Defendants satisfied
3 the requirements of 28 U.S.C. § 1715(b) and that more than ninety (90) days have
4 elapsed since Defendants provided the required notice, as required by 28 U.S.C. §
5 1715(d).

6 14. ***Continuing Jurisdiction.*** Without affecting the finality of this Final
7 Judgment, the Court retains continuing jurisdiction over (a) implementation of the
8 Agreement, distribution of the settlement payments, Service Award, and
9 attorneys' fees and costs contemplated by the Agreement, and processing of the
10 claims permitted by the Agreement, until each and every act agreed to be
11 performed pursuant to the Agreement has been performed, and (b) all parties to
12 this Action and members of the Settlement Class for the purpose of enforcing and
13 administering the Agreement.

14 15. ***Service Award.*** As an incentive payment in compensation for the
15 time, effort, and risk she undertook as representative of the Settlement Class, the
16 Court hereby awards \$_____ to Wendy Fleming.

17 16. ***Class Counsel Fee and Cost Award.*** The Court hereby awards
18 attorneys' fees and costs to compensate Class Counsel for their time incurred and
19 costs advanced. The Court has concluded that: (a) Class Counsel achieved a
20 favorable result for the Class by obtaining Defendants' agreement to make
21 available to Settlement Class Members certain monetary relief; (b) Class Counsel
22 devoted substantial effort to pre- and post-filing investigation, legal analysis, and
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1 litigation; (c) Class Counsel prosecuted the Class's claims on a contingent-fee
2 basis, investing significant time and accumulating costs with no guarantee that
3 they would receive compensation for their services or recover their costs; (d)
4 Class Counsel employed their knowledge of and experience with class action
5 litigation in achieving a valuable settlement for the Class, in spite of Defendants'
6 possible legal defenses and their experienced and capable counsel; (e) Class
7 Counsel have standard contingent fee agreements with Representative Plaintiff,
8 who has reviewed the Agreement and been informed of Class Counsel's attorney
9 fee and cost application and has approved; (f) the Class Notice informed
10 Settlement Class Members of Class Counsel's fee and cost request under the
11 Agreement; and (g) Class Counsel filed and posted their Fee Application in time
12 for Settlement Class Members to make a meaningful decision whether to object to
13 the Fee Application. Based upon these conclusions, and finding that Class
14 Counsel's Fee Application is meritorious, the Court hereby approves Class
15 Counsel's Fee and Cost Application and awards to Class Counsel fees in the
16 amount of \$_____ and costs in the amount of \$_____, for a total aggregate
17 amount of \$_____. This aggregate payment amount to Class Counsel is
18 reasonable considering the significant effort by Class Counsel, the quality of the
19 result achieved for the Class, the skill and persistence of Class Counsel in
20 achieving the result, and the uncertainty of the result in contrast to Class
21 Counsel's significant outlays in time and money to advance the interests of the
22 Class. All such fees and costs are in lieu of statutory fees and costs that
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1 Representative Plaintiff and/or the Settlement Class might otherwise have been
2 entitled to recover.

3 17. ***Payment Timing.*** Defendants shall pay the fee and cost award to
4 Class Counsel and the Service Award to Representative Plaintiff, as well as
5 amounts due to eligible Settlement Class Members who filed timely and valid
6 claims under the Agreement, in accordance with and at the times prescribed by
7 the Agreement.

8
9 IT IS SO ORDERED.

10
11 Dated: _____

UNITED STATES DISTRICT COURT
JUDGE

12
13
14 *Presented by:*

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